Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1993 Annual Access Tariff Filings	)	**CC Docket No. 93-193**
	)	
National Exchange Carrier Association Universal Service Fund and Lifeline Assistance Rules	)	**Transmittal No. 556**
	)	
GSF Order Compliance Filings	)	
	)	
Bell Operating Companies' Tariff for the 800 Service Management System and 800 Data Base Access Tariffs	)	**CC Docket No. 93-129**

COMMENTS OF
ALLNET COMMUNICATION SERVICES, INC. ON LEC DIRECT CASES

Allnet Communication Services, Inc. (Allnet) herein respectfully submits its comments on local exchange carrier (LEC) direct cases filed in response to the Commission's Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation (Investigation Order), released June 23, 1993). Allnet is commenting on the direct cases of filed by: Ameritech (AOC), Bell Atlantic (BA), Bell South (BS), Nynex, Pacific and Nevada Bell (PacBell), Southwestern Bell (SWB), US West (USW) and United Telephone (United). In those direct cases, the RBOCs seek to maintain monopoly pricing in the face of alleged, but apparently non-existing competition.

I. THE LECs HAVE NOT ADEQUATELY DEMONSTRATED THAT SFAS-106 TBO AMOUNTS WARRANT EXOGENOUS TREATMENT UNDER PRICE CAPS

The Commission found that, with respect to the control and double counting issues over SFAS-106 TBO amounts;

> [t]hese claims raise difficult issues concerning the degree of control LECs have over TBO amounts and concerning potential double-counting in several parts of the price cap formula.[1]

[1]Investigation Order at ¶27.

Specifically, the Commission concluded that the LECs may have some control to modify, suspend or terminate benefits. In addition, the Commission also stated that the record on double counting in the GNP-PI had been "enhanced" by an additional LEC-sponsored study (Godwins II). The Commission, however, did not rule that the GNP-PI double counting issue had been completely resolved. The Commission also concluded that other issues regarding intertemporal double counting, double counting related to the prescription of the rate of return which determined the initial price cap rates, and the potential double counting in anticipation of SFAS-106 costs in studies underlying the productivity factors were not adequately addressed in the tariff filings, petitions, or replies.[2]

The FCC's continued scrutiny over LEC SFAS-106 TBO amounts is warranted. The LECs have the burden of demonstrating that exogenous costs are (1) not within their control; and (2) not already included in the price cap formula itself. Most of the LEC direct cases focus primarily on the control portion of the Commission's two pronged test established for determining exogenous cost treatment. Many LECs are leading parties astray by attempting to focus attention on the control issue, by claiming that they will be forced to discontinue benefits to retired persons in order to comply with the FCC's rules, or suffer "myriad lawsuits from current retirees"[3] or even strikes. However, the FCC is not forcing them to discontinue any benefits. The LECs have not shown that they will be unable to recover these costs. The question here is only whether these costs meet both prongs of the exogenous cost treatment test. If not, the TBO costs cannot be claimed as exogenous and would simply need to be recovered from another source such as shareholder funds (as a competitive firm would be required to do). The discussions over the issues of control and double counting discussed below, are secondary to a major

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[2]Investigation Order at ¶¶28, 29.

[3]See, for example, AOC Direct case at page 3.

point not demonstrated by any LEC in their direct case. This issue of TBO costs boils down simply into a matter of **when** the LECs will recover the amounts, not **if** they will recover them. No LEC has demonstrated that denying exogenous cost treatment of the OPEB/TBO amounts represents an unlawful taking and that they will earn below their minimum authorized rates of return under price caps. Without such a showing, the LECs will obviously recover the TBO costs over time, versus a one time accounting change, because of many factors that are an integral part of the GNP-PI itself, and business decisions the LECs will make on a going forward basis to control benefit costs.

1. THE LECS HAVE NOT DEMONSTRATED THAT THEY CANNOT CONTROL TBO COSTS, OR CANNOT MODIFY RETIREE BENEFIT PLANS

The LECs have satisfactorily borne the burden of demonstrating that they cannot either (1) exercise control over TBO costs, or (2) modify existing benefit plans. Many LECs adamantly state they have implemented many types of controls in order to lower benefit costs.[4] By admitting that they can and have attempted to control benefit plan costs, the LECs have already failed the first prong of the FCC's exogenous costs treatment test. The LECs by their own admission do have the ability to exercise control over retiree benefit costs through changes in plan provisions, plan administrators, and the offering of medical, dental and mental health prevention programs. Further, the LECs statements that they are not able to modify or alter existing plan benefits due to union contracts is unpersuasive. First, as AT&T has already correctly pointed out, nothing in ERISA precludes an employer from changing or withdrawing OPEBs from its employees or retirees.[5] All of the LECs requesting exogenous treatment of TBO amounts were required to provide pertinent portions of all union contracts and other

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[4]See, for example, NYNEX Direct Case at Exhibit 1, page 20 of 31 "NYNEX has been quite active in efforts to control medical costs." Other LECs make similar statements.

[5]Investigation Order at footnote 39 citing AT&T Petition at page 7.

company materials dealing with TBO or OPEBs. Except for USW -- who should be required to immediately provide the union contract information -- the remaining LECs provided the requested information. For LECs that did provide excerpts from CWA or IBEW contracts, without exception, those contracts clearly permit changes in benefits after agreement with the Unions.[6] In fact, the AOC Direct Case states that it included the pertinent sections from "labor union contracts, although these contracts do not apply to retirees and therefore are irrelevant to Ameritech's request."[7] This admission flies in the face of statements to the contrary made by other LECs that the union contracts deny them the opportunity to modify the benefits.

2. THE LECs CANNOT GUARANTEE THAT NO DOUBLE COUNTING OF TBO AMOUNTS EXISTS

Even if one were to assume that the LECs were able to meet (which they have not) the first prong of the exogenous cost treatment test -- control -- the LECs cannot, and have not been able to demonstrate that no double counting of TBO amounts are not already included in the price cap calculations resulting in "double counting."[8] USW even states that "...only a very small portion of the TBO is reflected in the GNP-PI." USW continues to say that "...virtually all 'intertemporal double counting' of any significance can be removed through the annual true up process which it proposed earlier." [USW Direct Case at page 6.] It is clear from this statement alone, that the Godwins and Godwins II studies do not empirically demonstrate that the effects of the SFAS-106

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[6]See, for example, AOC Direct Case at Exhibit 2, page 2 of 28; BS Direct Case at page 209 (Section 19.903 of Contract).

[7]Footnote 4 to AOC Direct Case.

[8]As the FCC has already stated in CC Docket No. 87-313, Memorandum Opinion and Order on reconsideration, In the Matter of Policy and Rules Concerning Dominant Carriers, 6 FCC Rcd No. 3, "...some of changes FASB makes to GAAP affect only certain industries, other changes have near-universal impact on U.S. corporate accounting practices."[FOOTNOTE 98] The LECs Godwins study has not demonstrated with any degree of certainty that the SFAS-106 changes affected LECs disproportionately, or even exclusively. Therefore, the SFAS-106 changes would be reflected in the GNP-PI calculations already.

changes are not already somehow encompassed in the price cap calculations. With respect to the true up mechanism proposed by USW and other LECs, the Commission has already ruled that it would be "an undesirable and complex addition to the price cap plan."[9]

II. EXISTING PRICE CAP RULES REQUIRE LECS TO ADD-BACK AMOUNTS FROM SHARING OR LOW-END ADJUSTMENTS WHEN CALCULATING RATES OF RETURN FOR CURRENT YEAR SHARING OR LOW-END ADJUSTMENTS

The Commission set for investigation the following issue:

> How should price cap LECs reflect amounts from prior year sharing or low-end adjustments in computing their rates of return for the current year's sharing and low-end adjustments to price cap indices?

The Commission states that the add-back issue is currently before the Commission as a Notice of Proposed Rulemaking in CC Docket No. 93-179, and that "because the issue is unresolved we suspend the affected tariffs..." [Investigation Order at ¶32]

It is obvious from the text of the NPRM in CC Docket No. 93-179 that the add-back requirement was (and remains) an integral part of rate of return regulation with respect to the reporting of LECs revenues on FCC Form 492, and that the add-back requirement did not "dissolve" with the implementation of price cap regulation. Specifically, the Commission states:

> Our initial review of the record does not indicate that any commentors in the LEC Price Cap rulemaking or in the subsequent reconsideration proceeding discussed the details of rate of return calculations, or requested that we eliminate add-back from the rate of return calculation of the LEC price cap plan. In discussing and adopting changes in rate of return monitoring and reporting, we also did not indicate that the add-back provisions in From 492, which is used to report returns, were to be changed. [CC Docket No. 93-179 NPRM at ¶10]

It is abundantly clear, contrary to LEC assertions otherwise in their Direct Cases, that the add-back provisions *have and will continue to exist* under the current price cap rules. Thus, the NPRM is simply a "clarification" to the rules, and the LECs have, as

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[9]Investigation Order at ¶10 and FOOTNOTE 24 citing to the OPEB Order.

under rate of return reporting, a continuing obligation to comply with the add-back provisions under price cap regulation. NYNEX's direct case supports the FCC's NPRM, and the premise of the Investigation Order and states:

> In NTCs' view, the NPRM simply clarifies a requirement that is implicit in the Commission Price Cap rules. Add-back is necessary to enforce the upper and lower earnings limitations that are an essential aspect of the Price Cap system. While the LEC Price Cap Order did not discuss normalization, it also did not eliminate the continuing requirement that LECs report earned revenues in their Form 492 rate of return reports. It also did not alter the rule that the LECs are responsible for demonstrating the reasonableness of their tariff filings and for submitting sufficient information to support their tariffs. [NYNEX Direct Case at page 3; See also detailed discussion by NYNEX of legal basis supporting a determination that add-back is required under Price Caps found in Exhibit 2 to their Direct Case, pages 1 to 10.]

The LECs have not made a persuasive showing in any of their direct cases that would not alter what the Commission and NYNEX have correctly determined -- that add-back is already implicit in the Price Cap rules. Accordingly, the Commission must rule that the add-back requirement has not been complied with under the Price Cap rules, and require the LECs to make changes to reflect compliance with normalizing earned revenues in their Form 492 rate of return reports.

III. PRICE CAP RULES DO NOT PERMIT BELL ATLANTIC (AND ALL LECS) TO EXCLUDE EUCL REVENUES FROM THE COMMON LINE BASKET WHEN DETERMINING SHARING OBLIGATIONS

In its Investigation Order, the Commission stated that "... it was not clear that Bell Atlantic's exclusion of end user revenues from the common line basket for sharing purposes is consistent wit the LEC Price Cap Order and the 1992 Annual Access Order." [Investigation Order at ¶42] The Commission then set the following issue for investigation:

> Should Bell Atlantic be permitted to exclude end user charge revenues from the common line basket for the purposes of computing sharing obligations?

It should first be noted that it also appears that Pacific Bell also removed end user revenues from the common line basket prior to sharing any amounts. [See, Pacific Bell

Workpaper IIC-7 Distribution of Sharing, replicated in the footnote below[10]. [Revising the Pacific Bell Workpaper IIC-7 to reflect compliance with Price Cap rules is reflected in the referenced footnote below.[11]] A review of both the LEC Price Cap Order and the 1992 Annual Access Order does not support BA's position that "such exclusion is inconsistent with the Commission's Price Cap Rules."[BA Direct Case at page 10]. Nor is it relevant the manner by which SLC's are developed. [BA Direct Case at page 9; AOC PacBell, USW also support excluding EUCL revenues from the common line basket.] Excluding EUCL revenues from the common line basket does not comply with the existing rules. In 1992 Annual Access Order, the Commission ordered LECs to allocate sharing or low-end adjustments on the basis of basket revenues instead of basket earnings as proposed by several LECs in their 1992 access tariff filings. The Commission correctly pointed out that the "[a]pportionment of that obligation [i.e., sharing] among all price cap baskets by revenue is most consistent with this approach." "Thus, it is more consistent to share the benefits of overall increased productivity across all baskets, than to apportion those benefits on the basis of relative basket earnings or to target those benefits to specific baskets." [See, 1992 Annual Access Order at ¶¶ 6-8] BA,

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PACIFIC BELL
WORKPAPER IIC-7
DISTRIBUTION OF SHARING
(000s)

	Net Revenue	Distribution Factor	Sharing By Basket
Common Line	743,924		
Less: end user revenue	594,285		
	149,639	0.161995	590
Traffic Sensitive	548,381	0.593662	2,162
Special Access	225,151	0.243743	888
Interexchange	555	0.000600	2
Total	923,726	1.000000	3,641

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PACIFIC BELL
CORRECTED WORKPAPER IIC-7
DISTRIBUTION OF SHARING
(000s)

	Net Revenue	Distribution Factor	Sharing By Basket
Common Line	1,338,209	0.6335303	2,307
Traffic Sensitive	548,381	0.2596126	945
Special Access	225,151	0.1065905	388
Interexchange	555	0.0002627	1
Total	923,726	1.000000	3,641

and other LECs are improperly seeking to reopen the debate previously closed by the 1992 Annual Access Order. Allocation of sharing and low end adjustments must be based on total basket level revenues as the Commission has already determined. To do otherwise as suggested by BA and the other LECs would "target" specific baskets (i.e., decrease the sharing in the common line basket, and increase sharing in other baskets including the interexchange basket.) The Commission's rules and determinations are clear and concise. Their is no room for additional interpretation as BA desires. The Commission must deny BAs' (and Pacific Bell as demonstrated above) improper attempts to allocate sharing amounts (or low-end adjustments) by excluding EUCL revenue from the common line basket.

IV. BA AND SNET HAVE NOT CORRECTLY CALCULATED THE "G" FACTOR

In the Investigation Order, the Commission sets the following issue to be addressed by SNET, BA and other parties:

> Have Bell Atlantic and SNET correctly calculated the "g" factor? Parties addressing this issue should discuss whether the fact that revenues in the PCI calculation are viewed over an entire year requires that other factors in the PCI formula be treated consistently. Responsive parties should also address whether an average line count should apply to both the base year, and the base year minus one.

As AT&T correctly pointed out in its Petition in the 1993 Annual Access tariff filings of the LECs, BA and SNET have not properly calculated the "g" factor in their price cap index formula for the common line basket. The Commission's rules are clear, 61.45(c) defines "g" as "the ratio of minutes of use per access line during the base period, to the minutes of use per access lines during the base period, minus 1." [47 C.F.R, §61.45(c), emphasis added]. BA's attempt to use the fourth quarter access lines does not reflect the access lines **during the base period,** as defined by the rules. The only way to derive access lines during the base period is to average the access lines over the entire base period. Therefore, BA is incorrect in its interpretation and derivation of the "g" factor in the PCI. It also makes no difference that BA had been previously (albeit incorrectly) calculating the "g" factor by using end period access lines with respect to a

requirement that it comply with the Price Cap rules in this specific tariff filing. The Commission should find BA in violation of §61.45(c) and require the immediate recalculation which would result in the approximately $5.45 million PCI common line reduction previously derived by AT&T. The Commission should also require SNET to derive the "g" factor in the same manner which complies with §61.45(c).

V. LIDB PER QUERY CHARGES SHOULD BE ASSIGNED TO THE LOCAL SWITCHING CATEGORY WITHIN THE TRAFFIC SENSITIVE BASKET

In the Investigation Order, the Commission noted that all LECs, except United, placed the LIDB per query charges in the local transport category within he traffic sensitive basket. As a result, the Commission set the following for issue investigation:

> To what category or categories should the LIDB per query charges be assigned?

With the exception of NYNEX, no other LEC attempts to make any showing outside of a simple statement that they "believe" that LIDB query charges should be in the local transport category, not local switching. Ameritech reasons that "consensus" is a demonstration that the LIDB charges should be in local transport, not local switching.[12] Remaining LECs, other than NYNEX, make no showing outside of an affirmative statement that they "believe" that LIDB belongs in the local transport category, not local switching. These staetments are ironic because they are contrary to previous concerns raised by the LECs in CC Docket 91-213 (Transport Proceeding). The record in the Transport Proceeding is full of LEC statements that the transport is overloaded with costs which do not belong there. It is interesting that the LECs now argue to include additional costs in the transport category. The motive for such a change in cost allocation raises questions.

United's description set forth in its Direct Case at pages 3 to 6, correctly demonstrate that the LIDB query and the LIDB transmission element are more closely

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[12]See, AOC Direct Case at page 5.

aligned with switching functions, and therefore comply the Commission's LEC Price Cap Order rules. As United notes, "[s]witching involves information necessary to route calls to their destination or to refuse completion of the calls as appropriate. The LIDB makes logical decisions concerning call routing and provides information necessary in call delivery -- whether the call should be completed or not. Thus, LIDB is primarily a switching function, not a transport function." [United Direct Case at page 5.] NYNEX's argument that both LIDB elements are more closely related to transport are not persuasive. In fact, an alternative to a centralized LIDB would be for each switch to contain the entire LIDB database for making switching decisions. In contrast, there is no transport architecture alternative. The Commission should determine that United has properly assigned LIDB elements to the local switching category as they perform functions more closely aligned with switching functions than to transport functions.

VI. CONCLUSION

For the reasons set forth herein, the Commission must determine that the LECs under investigation (1) have not demonstrated that SFAS-106 TBO amounts should be granted exogenous treatment; (2) that the add-back requirement has not been complied with; (3) that Bell Atlantic and other LECs should not be permitted to exclude EUCL revenues from common line revenues prior to sharing; (4) the Bell Atlantic and SNET have not calculated the "g' factor correctly; and (5) that LIDB charges are properly assigned to the local switching category as demonstrated by Untied Telephone.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Angela Slaughter, hereby certify that a complete copy of the foregoing Comments was served, via first class, postage prepaid, United States mail to the parties listed on the attached service list this 24th day of August, 1993.

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